

oil, an emulsifier, water, and ethanol (antifoaming agent).

Claim 1 recites a composition comprising a vegetable oil, an emulsifier, and a foaming agent. The Applicants are unable to find in the reference patent a “foaming agent.” Indeed, the Applicants respectfully agrees with the Examiner that ethanol is typically used as an *antifoaming agent*. Accordingly, the composition disclosed in Claim 1 and dependent Claim 14, as amended, is not anticipated by the composition disclosed in ‘JP 62091236.

In view of the forgoing, the Applicants respectfully submits the rejection 1 and 14 under 35 U.S.C. 102(b) as being anticipating by JP 62091236 should be withdrawn.

The rejection of Claims 35, 42-44 as being rejected under 35 U.S.C. 102(b) as being anticipated by Henriet et al. (WO 9601047) is respectfully traversed.

The Examiner takes the position that Henriet et al. discloses a method of treating crops with a composition comprising a pesticide, vegetable oil, an emulsifying system, and water. The composition is formulated into an oil-in-water emulsion.

The Applicants respectfully submit that Claim 35, as amended, comprises the step of producing a pre-emulsion concentrate consisting essentially of a vegetable oil and an emulsifier. With respect to Claim 42, the method comprises the steps of producing a pesticide. The composition disclosed in Henriet comprises one or more active pesticides and comprise a major component of the composition and using a solvent which may comprise a vegetable oil. Referring to dependent Claims 43 and 44, the Applicants are unable to find in Henriet et al. any disclosure that the vegetable oil is a crude vegetable oil (Claim 43) or the composition comprises about 40% to about 90% by weight of vegetable oil (Claim 44). Accordingly, the composition of Claim 35, the methods of Claim 42, 43 and 44 are significantly different than the Claimed invention.

In view of the foregoing, the Applicants respectfully submit that the rejections of Claims 35 and 42-44 should be withdrawn.

The rejection of Claims 1-3, 7, 15, and 17 under 35 U.S.C. 103(a) as being unpatentable over JP 06080992 is respectfully traversed.

The Examiner takes the position that JP '992 discloses a composition comprising 20-25% coconut oil, lauryl alcohol ethoxylate, octyl phenol, and water. The prior art, however, does not disclose the instant amount of coconut oil of between 40 and 90%. The reference discloses the composition as a detergent. In the absence of unexpected results, one having ordinary skill in the art would have been expected to determine the optimum amount of oil through routine experimentation. Optimization may result in the composition comprising the instant range of oil.

The Applicants respectfully submit that independent Claim 1, as amended, recites an *agricultural* composition for producing a foam for use in protecting plants against *frost or freezing temperatures* comprising "about 40% to about 90% by weight of a vegetable oil; an emulsifier; and a foaming agent." It has been found that a foam produced from a composition comprising about 40% to about 90% by weight of a vegetable oil is effective for protecting plants from injury caused by frost or freezing temperatures. However, as stated on page 10, lines 1 through 4 of the subject specification,

"One problem with producing a foam which is effective for providing protection for a plant from injury caused by frost or freezing temperatures is the difficulty of providing a stable oil and emulsifier composition having a relatively large percentage of vegetable oil."

In contrast, the composition disclosed in JP '992 is for a *detergent* that is comprised of various components. The Applicants, however, are unable to find in the composition of JP'992 a "foaming agent." Thus, the Applicants respectfully submits that the composition would *produce little to no*

foam. The Applicants respectfully submit that depending on the purpose of the detergent, the formation of foam may not be desirable.

The Applicant again submits that the composition and function of JP'992 is different than the composition of the subject application and is suitable for use as an agricultural product for producing a foam for use in protecting plants against frost or freezing temperatures. **At best**, the Examiner can only show that one skilled in the art may find it *obvious to try* to modify the composition taught or disclosed in JP'992 reference along the lines of the subject invention. However, it is well known that "obvious to try" is **not** the proper basis for rejecting a claim under Section 103 and will not support a case of prima facie obviousness.

Accordingly, the Applicant respectfully submits that the agricultural composition of the subject application is **compositionally and functionally different than the detergent composition disclosed in JP'992 reference and identifies and solves problems not addressed in the JP'992 reference.**

In view of the foregoing, the Applicants respectfully submit that the rejection of Claims 1-3, 7, 15 and 17 under 35 U.S.C. should be withdrawn.

The rejection of Claims 1 and 22 under 35 U.S.C. 103(a) as being unpatentable over Roberts (U.S. 5,580,567) is respectfully traversed.

The Examiner takes the position that Robert discloses a composition comprising a surfactant, cottonseed oil, alcohol ethoxylate. Further, the references teaches that the composition comprise a pesticide, herbicide, or fertilizer. The reference, however, does not provide an example composition comprising a pesticide.

The Applicants respectfully submits that Robert does not disclose or teach the use of a *foaming*

agent as claimed in Independent Claim 1. Indeed, the Applicants submit that *adjuvant* application as described in Robert would not require and it would not be desirable to have the composition foam. The Applicants are also unable to find any teaching that the adjuvant should or could be mixed with water to form an oil-in-water emulsion. Particularly, an oil-in-water emulsion that can be sprayed on plants or which produces a stable foam. Accordingly, Robert does not teach or disclose the claimed invention.

In view of the foregoing, the Applicants respectfully submit that the rejection of Claims 1 and 22 under 35 U.S.C. 1-3(a) as being unpatentable over Roberts should be withdrawn.

The rejection of Claims 25 - 27 under 35 U.S.C. 103(a) as being unpatentable over JP'992 as applied to Claims 1-3, 7, 15, and 17 above, and further in view of JP 06264097 or Blandiaux et al. is respectfully traversed.

The Examiner takes the position JP'992 recites a *detergent* composition with all the components of Claims 1-3, 7, 15, and 17 except for the detergent comprising a quaternary ammonium compound or sodium lauryl sulphate and triethanolamine and crude oil. JP'097 discloses a *detergent* comprising a quaternary ammonium compound and Blandiaux et al. discloses a *detergent* comprising sodium lauryl sulphate and triethanolamine. One having ordinary skill in the art would have been expected to add the detergent composition taught by JP'097 or Blandiaux et al. to the detergent composition taught in JP'992. One would have been motivated to do this because all compositions have the same utility, i.e. **being used as detergents**. In the absence of unexpected results, one having ordinary skill in the art would have used crude or refined oil.

The Applicants respectfully restate the arguments made herein above with respect to Claims 1-3, 7, 15, and 17 as applied to Claim 25. In addition, the Applicants are unable to find in the cited references any teaching showing the desirability of a foaming agent. As previously stated, not all foaming is not a desired feature for all detergents. Further, to support the conclusion that the

claimed invention is directed to obvious subject matter, there must be something in the references that reasonably suggest or teach the claimed invention. Even if all of the elements of a claim are disclosed in various prior art references, the claimed invention taken as a whole cannot be said to be obvious without some reason given in the prior art why one of ordinary skill would have been **prompted** to combine the teachings of the references to arrive at the claimed invention.

The Applicants submit that the **problems identified** in the subject application, protecting plants from frost and freezing temperatures, and the **purposes of the references**, detergents, of the cited references are significantly **different**. Accordingly, the Applicants submit that the references **fail to identify, teach, or disclose the problems identified in the subject application and do not solve or remedy any such problems**. The Applicants are unable to find anything in the reference that would reasonably suggest or teach the possibility of achieving further improvement in the art by combining the teachings of JP'992, JP'097 and Blandiux et al. To support the conclusion that the claimed invention is directed to obvious subject matter, either the reference must expressly or impliedly suggest the claimed combination or the Examiner must present a convincing line or reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references. As previously stated, the purpose of the composition described in independent Claims 25 is to provide a foam for protecting plants against frost or freezing temperatures. The Applicant respectfully submits that he is **unable to find any motivation** as to why one would combine detergents disclosed in the cited references to form a foam for protecting plants from frost or freezing temperatures. Even if all of the elements of a claim are disclosed in various references, the claimed invention *taken as a whole* cannot be said to be obvious without some reason given in the prior art as to why one of ordinary skill would have been prompted to combine the teachings of the references to arrive at the claimed invention.

In view of the foregoing, the Applicants respectfully submit that Claims 25-27 under 35 U.S.C. 103(a) as being unpatentable over JP'992 in view of JP'097 or Blandiaux et al. should be withdrawn.

IN CONCLUSION:

The Applicant respectfully submits that he is unable to find in the references cited any teaching that would suggest the advantages or desirability of the gutter system of the subject application and there is nothing in the prior art references that would have led one of ordinary skill in the art to develop the compositions of the claimed invention. To support the conclusion that the claimed invention is directed to obvious subject matter, either the reference must expressly or impliedly suggest the claimed combination or the Examiner must present a convincing line or reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references. Even if all of the elements of a claim are disclosed in various references, the claimed invention taken as a whole cannot be said to be obvious without some reason given in the prior art why one of ordinary skill would have been prompted to combine the teachings of the references to arrive at the claimed invention.

It is also a basic tenet of patent law that one is *not permitted to ignore the results and advantages* produced by claimed subject matter simply because the claim limitations may be similar to those of the prior art. Obviousness determinations must include consideration of the invention as a whole, including its composition, its properties, and the problem it solves. Surely, motivation to modify the compositions of the cited references cannot come from the teaching of the advantages and benefits of the compositions disclosed in the subject specification. Indeed, the Applicants have developed novel **agricultural compositions** that may be used for protecting plants from frost and freezing temperatures and/or for use as a pesticide. Without any teaching or disclosure of the advantages of the claimed invention, the Applicant respectfully submits that the cited references would not prompt one skilled in the art to pick and choose from the claims disclosed and combine their teachings to arrive at the claimed invention.

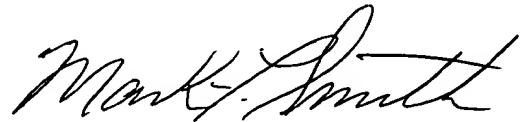
Secondary considerations should also be evaluated in determining obviousness. Such is true even where the claimed invention involves only relatively simple concepts. The Applicants respectfully submit that the prior art does not teach or suggest the necessity or desirability of providing protection from frost or freezing temperatures. The Applicants again submit that the cited

references are **compositionally and functionally different than the compositions of the subject application** and are not suitable for use in protecting plants from frost or freezing temperatures or for use as a pesticide that can be mixed with water. **At best**, the Examiner might be able to show that one skilled in the art may find it *obvious to review and try* to modify the compositions taught or disclosed in the cited references along the lines of the subject invention. However, it is well known that "obvious to try" is **not** the proper basis for rejecting a claim under Section 103 and will not support a case of prima facie obviousness.

Accordingly, the Applicants respectfully submit that the compositions of the subject application are **compositionally and functionally different than the compositions disclosed in the cited references and identifies and solves problems not addressed in the prior art references.**

In view of the foregoing amendments and remarks, it is respectfully submitted that Claims 1 through 5 and 7-47 are allowable over the art of record. Reconsideration of all claims now in this application is respectfully requested.

Respectfully submitted,



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